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Dated: May 12, 2009

Signature: /Lynette K Werner/
Lynette K. Werner

Docket No.: 10000-02 GRA-01A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Bruce Williams et al.

Application No.: 10/676,447

Confirmation No.: 7057

Filed: October 2, 2003

Art Unit: 3636

For: Child Seat

Examiner: Erika P. Garrett

APPELLANTS' BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is submitted in furtherance of a second Notice of Appeal, which was electronically filed in the U.S. Patent and Trademark Office on March 12, 2009. According to the MPEP §1204.1, the previously paid fee of \$510 for an earlier filed Appeal Brief, filed on September 2, 2008, applies to the instant appeal and payment of \$30 for an increase in the fee under 37 C.F.R. §41.20(b)(2) was authorized via deposit account debit upon filing of the second Notice of Appeal.

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37 C.F.R. §41.37 and M.P.E.P. §1205.02:

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal is GRACO CHILDREN'S PRODUCTS INC. An assignment to same was recorded on May 1, 2002, at Reel 012853, Frame 0603 in parent U.S. application No. 10/072,601 (now U.S. patent No. 7,066,536). The instant application is a division of the referenced parent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Status of All Claims

All pending claims 43-46 and 59-64 in the application stand rejected under 35 U.S.C. § 103(a).

<u>Claims</u>	<u>Status</u>
1-42	Canceled
43-46	Rejected
47-58	Canceled
59-64	Rejected

B. Claims on Appeal

The pending claims on appeal are claims 43-46 and 59-64.

IV. STATUS OF AMENDMENTS

The present application was filed on October 2, 2003. The status of all amendments is as follows:

- Response after Non-Final Action 9/15/2004 - entered
- RCE Filed after Final Action 2/28/2005 - entered
- Response after Non-Final Action 6/17/2005 - entered
- Response after Final Action 10/19/2005 - entered
- Request for Pre-Appeal Conference 1/9/2006 - entered (prosecution re-opened)
- Response after Non-Final Action 6/5/2006 - entered
- RCE Filed after Final Action 1/29/2007 - entered
- Response after Non-Final Action 5/29/2007 - entered
- Response after Non-Final Action 11/14/07 - entered
- Notice of Appeal Filed 7/1/08 - entered
- Appeal Brief Filed 9/19/08 - entered (prosecution re-opened)
- Notice of Appeal Filed 3/12/09*

* A non-final office action dated December 12, 2008 was mailed re-opening prosecution. This appeal is taken from that action.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 43 is directed to a child seat 10 for use in a vehicle (page 8, paragraph [0042]) that has a base 200 and a seating surface (page 4, paragraph [0015], page 8, paragraph [0044]), an armrest 250 connected to the base 200 on a side of the seating surface (page 6, paragraph [0021], pages 8 and 9, paragraphs [0045] and [0046], FIG. 2). The armrest 250 is adjustable along a straight line (FIG. 2) between a first height position relative to the seating surface and a second height position relative to the seating surface (page 9, paragraph [0046], pages 10, and 11, paragraphs [0052] and [0053]). The armrest 250 includes only one connecting portion (FIG. 2) that slidably telescopes relative to a corresponding receiving portion 240 of the base 200 (FIG. 2). The child seat 10 is configured for placement on a seat of the vehicle (page 8, paragraph [0042]). The child seat 10 has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle (page 9, paragraph [0046]). One of the receiving portion 240 and the connecting portion includes a slot 242 for receiving a tab 255 located on the other of the receiving portion 240 and the connecting portion (page 11, paragraph [0054], FIG. 2).

Independent claim 46 is directed to a child seat 10 for seating a child within a vehicle that has a base 200 having a seating surface (page 4, paragraph [0015], page 8, paragraph [0044]), an armrest 250 connected to the base 200 on a side of the seating surface and positioned on the side of the seating surface (page 6, paragraph [0021], page 8, paragraph [0043], FIG. 2). The armrest 250 is adjustable along a straight line (FIG. 2) between a first height position relative to the seating surface and a second height position relative to the seating surface (pages 10 and 11, paragraph [0053]). The armrest 250 includes a connecting portion (FIG. 2) that slidably fits into a corresponding receiving portion 240 of the base 200. The child seat 10 is configured for placement on a seat of the vehicle (page 8, paragraph [0042]). The child seat 10 has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle (page 9, paragraph [0046]). One of the receiving portion 240 and the connecting portion includes a slot 242 for receiving a protrusion 260 on a resilient flexible tab 255 integrally formed as part of the other of the receiving portion 240 and the connecting portion (page 10, paragraph [0052], FIG. 2, FIG. 18).

Independent claim 59 is directed to a child seat 10, for seating a child within a vehicle. The seat has a base 1200 having a seating surface (page 11, amended paragraph [0054], replacement FIG. 18) defining a seat bottom, a pair of armrests 1250 connected to the base 1200 and positioned on opposite sides of the seating surface (page 11, amended paragraph [0054], replacement FIG. 18). Each armrest 1250 is adjustable along a straight line (FIG. 2) between first and second height positions and wherein a majority of movement of each armrest 1250 between the first and second height positions is vertically toward and away from the seat bottom (pages 10 and 11, paragraph [0053]). Each armrest 1250 includes only one connecting portion (FIG. 18) that slidably fits over a corresponding single receiving portion 1240 of the base 1200 (page 11, amended paragraph [0054], replacement FIG. 18). Each armrest 1250 includes holes 1242 for receiving protrusions 1260 from the receiving portion 1240 of the base 1200 (pages 10 and 11, paragraph [0052] and amended paragraph [0054], replacement FIG. 18). The child seat 10 is configured for placement on a seat of the vehicle (page 8, paragraph [0042]).

Independent claim 60 is directed to a child seat 10 for seating a child within a vehicle (page 8, paragraph [0042]). The seat has a base 200 including a seating surface (page 4, paragraph [0015], page 8, paragraph [0044]), and an armrest 250 having only one connecting portion (FIG. 2) surrounded by, telescopically received in, and slidable relative to a receiving portion 240 of the base 200 on a side of the seating surface (pages 8 and 9, paragraphs [0045] and [0046], FIGS. 1 and 2). The armrest 250 is adjustable along a straight line (FIG. 2) in a vertical direction generally perpendicular to the seating surface (pages 10 and 11, paragraph [0053], FIG. 2). The armrest 250 includes a tab 255 that fits into a receiving slot 242 of the base 200 (page 10, paragraph [0052]). The child seat 10 is configured for placement on a seat of the vehicle [page 8, paragraph [0042]). The child seat 10 has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle (page 9, paragraph [0046]).

Independent claim 61 is directed to child seat 10 for seating a child within a vehicle. The seat has a base 1200 having a seating surface (page 11, paragraph [0054] replacement FIG. 18) and a pair of armrests 1250 positioned and connected to the base 1200 on opposite sides of the seating surface (pages 11, amended paragraph [0054], replacement FIG. 18). Each armrest 1250 is adjustable in a vertical direction (FIG. 2) and armrest movement is

substantially upward and downward relative to the seating surface (pages 10 and 11, paragraph [0053]. Each armrest 1250 has only one connecting portion (page 11, amended paragraph [0054], replacement FIG. 18) telescopically movable over a receiving portion 1240 of the base 1200 received within the connecting portion (replacement FIG. 18). Each receiving portion 1240 of the base 1200 includes a resilient flexible tab 1255 integrally formed as part of the receiving portion 1240 and protrusions 1260 on the flexible tab 1255 (page 10 and 11, paragraph [0052] and amended paragraph [0054], replacement FIG. 18). The child seat is configured for placement on a seat of the vehicle (page 8, paragraph [0042]). The child seat 10 has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle (page 9, paragraph [0046]).

Independent claim 62 is directed to a child seat 10 for seating a child within a vehicle. The child seat 10 has a base 1200 with a seating surface (page 11, amended paragraph [0054], replacement FIG. 18), and a pair of armrests 1250 each positioned on and connected to the base 1200 on opposite sides of the seating surface (page 11, amended paragraph [0054], replacement FIG. 18). Each armrest 1250 is adjustable between first and second positions substantially toward and away from the seating surface (pages 10 and 11, paragraph [0053] and amended paragraph [0054], replacement FIG. 18). Each armrest 1250 includes a connecting portion (replacement FIG. 18) that fits around a corresponding receiving portion 1240 of the base 1200 (page 11, amended paragraph [0054], replacement FIG. 18). Each receiving portion 1240 includes a resilient flexible tab 1255 (replacement FIG. 18) integrally formed as part of the receiving portion 1240 and a protrusion 1260 on the flexible tab 1255 (page 10 and 11, paragraph [0052] and amended paragraph [0054], replacement FIG. 18). Each connecting portion (replacement FIG. 18) includes first and second slots 1242 (replacement FIG. 18) to receive the protrusion 1260 (page 11, amended paragraph [0054], replacement FIG. 18). The first and second slots 1242 correspond to the first and second positions, respectively (replacement FIG. 18). The child seat 10 is configured for placement on a seat of the vehicle (page 8, paragraph [0042]).

V. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 43, 46, 59-61, and 63 are unpatentable under 35 U.S.C. §103(a) over Carnahan, U.S. Patent No. 6,474,735 (Carnahan) in view of Congleton, U.S. Patent No. 6,296,312 (Congleton).

Whether claims 44 and 45 are unpatentable under 35 U.S.C. §103(a) over Carnahan and Congleton and further in view of McAllister, U.S. Patent No. 6,394,553 (McAllister).

Whether claims 62 and 64 are unpatentable under 35 U.S.C. §103(a) over Carnahan in view of McAllister.

VI. ARGUMENT

Pending claims 43, 46, 59-61, and 63 are not rendered obvious by Carnahan in view of Congleton.

Pending claims 44 and 45, which depend from independent claim 43, are not rendered obvious by Carnahan in view of Congleton and further in view of McAllister.

Pending claim 62 and dependent claim 64 are not rendered obvious by Carnahan in view of McAllister.

A. Carnahan in View of Congleton Does Not Render Obvious Pending Claims 43, 46, 59-61, and 63

The rejection of claims 43, 46, 59-61, and 63 is traversed on each of the following grounds.

1. The Combination of Carnahan in View of Congleton Is Improper

The most recent office action again cites Carnahan as a primary §103 reference. Carnahan teaches a child seat for seating a child within a vehicle, but has an entirely different armrest scheme than is presently claimed. Rejections based on the Carnahan reference have been traversed twice in past office actions. Carnahan teaches armrests that rotate about a horizontal axis to achieve height adjustment on a child's car seat. Each Carnahan armrest 22 rotates about a generally horizontal axis, and is connected to a seat back 34 and an arm rest post 37 proximate to the front of the seating surface. The axis of the armrest body is offset so that the body can rotate to change the armrest height.

Congleton is cited in combination with Carnahan and teaches an office chair having a vertically slidable and adjustable armrest. The office chair seat base in Congleton is elevated above a support surface by a post. The elevated seat base allows the armrest assemblies in Congleton to attach to *an underside* of the seat base. The armrests adjust in height relative to the seat. The armrest has a height extendable support arm 12. A pivoting, spring biased latch member 74 on a sleeve 62 engages with notches 75 and teeth 70 on a surface of an L-shaped arm 60 on the support arm 12 inside the sleeve 62 to vertically adjust the sleeve 62 along the arm 60. A protrusion 84 on the lower end 86 of the latch member 74 seats in one of the notches 75 to retain the armrest at a selected height.

As has been successfully argued in this application before, the rotational height adjustment scheme of the armrests is thoroughly claimed and meticulously described in Carnahan. Congleton is not properly combinable in the manner suggested by the examiner with Carnahan. As stated in the MPEP §2145, the reference combination “cannot change the principle of operation of the primary reference or render the reference inoperable for its intended purpose.” Modifying Carnahan to alter the armrest adjustment according to Congleton’s vertical sliding armrest would require completely abandoning the Carnahan armrests’ principal of operation, which requires horizontal rotation of the armrest body. The combination of Carnahan and Congleton would destroy the express teachings of Carnahan and would thus completely change the principal of operation of the Carnahan armrests. Combining the teachings of Carnahan and Congleton in the manner set forth in the office action is thus improper, and the rejection of claims 46, 59-61, and 63 should be withdrawn on at least these grounds.

MPEP §2121.02(I) states that the claimed invention as a whole must be considered. Each claim pending in the application is directed to a child seat for seating a child within a vehicle. As one of ordinary skill in the art knows, the child seat rests directly on the vehicle’s seat during use. The combination of Carnahan in view of Congleton would not result in such a child seat as claimed. One of ordinary skill in the art would not look to Congleton to modify the Carnahan seat in the manner set forth in the office action. Congleton’s armrests connect underneath the underside of the seat bottom and not to the sides of the seat bottom. Thus, modifying Carnahan to employ the Congleton armrests would result in a seat not capable of seating a child in a vehicle. The armrest connections would interfere with the bottom of the seat base resting on the vehicle seat. Further modifying either reference’s teachings to solve this problem would go well beyond the prior art teachings. Modifying Carnahan according to the teachings of Congleton would result in a car seat that cannot rest on a vehicle seat. The Congleton armrests thus cannot be integrated into the car seat of Carnahan without rendering the Carnahan seat unsuitable for its intended purpose. Such a combination would render the Carnahan seat unsuitable for use as a car seat. Thus, the rejection of claims 43, 46, and 59-61 should be withdrawn at least on these additional grounds.

Also, MPEP §2121.02(VI) requires that the prior art must be considered in its entirety, including disclosures that teach away from the claims. In both the instant application and in Carnahan, the car seat base must necessarily be placed on the support surface, which is the seat of the vehicle. The armrest of Congleton, with its attachment location at the underside of the seat base, would prevent the proper placement of the Carnahan seat on a vehicle seat. Thus, Congleton teaches away from the combination. The examiner cannot choose to cite the reference only for the idea of a vertically telescoping feature, while ignoring the structure, function and attachment method of that armrest to the seat base. This is particularly true in this case, because the Carnahan armrests are entirely different, both structurally and functionally. Refitting the Carnahan seat with Congleton's armrests without the structures of Congleton would require a complete redesign of both the references' armrests. Thus, the rejection of claims 43, 46, and 59-61 should be withdrawn for at least these additional reasons.

2. Carnahan in View of Congleton Does Not Render Obvious Claims 43 and 60 Having the Limitation of a Tab

Independent claim 43 recites a child seat for seating a child within a vehicle that has an armrest and a base *"wherein one of the receiving portion and the connecting portion includes a slot for receiving a tab located on the other of the receiving portion and the connecting portion."* A tab is essentially a tongue or flap of material.

Again, Carnahan teaches armrests on a child's car seat that rotate about a horizontal axis. Each Carnahan armrest 22 is connected to the seat back 34 and a respective arm rest post 37. Each armrest 22 further has an ovoid-shaped cross section like a cam with an offset horizontal axis of rotation 41. To achieve a change in height of the Carnahan armrests 22, each armrest is rotated 180° around the axis 41 between two selectable positions; an upper position and a lower position. Carnahan further teaches a push button assembly 46 coupled to a front pivot pin 43 of the arm rest 22 for operating/releasing the height adjustment mechanism. Carnahan fails to teach a tab on an armrest portion that fits in a slot on the other armrest portion as in claim 43.

Congleton teaches an armrest that is height adjustable on an office chair. The armrest has a height extendable support arm 12. As stated above, the pivoting latch member 74 cooperates with notches 75 and teeth 70 inside the sleeve 62 of the support arm 12 to adjust

and control the vertical position of the sleeve 62 along the arm 12. The latch member 74 has a protrusion 84 on the end 86 that seats in one of the notches 75 to retain the armrest at a selected height. Neither the protrusion 84, the end 86, nor the latch member 74 is a flexible tab, tongue, or flap of material. Therefore, Congleton fails to correct the above-noted deficiencies of Carnahan. Both references lack a tab as claimed.

The rejection of the claim 43 should be withdrawn for at least this additional reason. The combination of Carnahan and Congleton fails to teach or suggest all of the limitations of claim 43.

Claim 60 recites “*wherein the armrest includes a tab that fits into a receiving slot of the base*”. As stated above with respect to claim 43, both Carnahan and Congleton fail to teach or suggest a tab as claimed. Neither Carnahan nor Congleton teaches an armrest having a connecting portion with slots and a receiving portion having a tab as recited in claim 60. The combination of Carnahan and Congleton fails to teach or suggest at least this limitation of claim 60. Thus, the obviousness rejection of claim 60 should also be withdrawn for at least this additional reason.

3. Carnahan in View of Congleton Does Not Render Obvious Claims 46 and 61 Having the Limitation of an Integrally Formed Resilient Flexible Tab

Claim 46 recites, among other things, a child seat with an armrest “*wherein one of the receiving portion and the connecting portion includes a slot for receiving a protrusion on a resilient flexible tab integrally formed as part of the other of the receiving portion and the connecting portion.*” As stated above, Carnahan does not teach or suggest a tab, much less a resilient flexible tab integrally formed as claimed. Congleton also does not teach or suggest a tab, much less a *resilient flexible integrally formed tab* as recited in independent claim 46.

The action points to nothing in Carnahan or Congleton as support for any disclosure of a resilient, flexible, integrally formed tab. Congleton teaches an adjustment assembly that has a biased latch pin with multiple components, such as a pivoting latch, a spring, and notches, not an integrally formed flexible tab provided as part of either the sleeve 62 or the arm 60.

Therefore, Carnahan in view of Congleton fails to teach or suggest all of the limitations recited in claim 46. For at least this additional reason, the rejection of claim 46 based on Carnahan in view of Congleton should be withdrawn.

Claim 61 also recites “*wherein each receiving portion of the base includes a resilient flexible tab integrally formed as part of the receiving portion and protrusions on the flexible tab.*” As noted above with respect to claim 46, Carnahan in view of Congleton fails to teach or suggest at least this limitation recited in claim 61. Thus, for the reasons stated above with regards to claim 46, the rejection of claim 61 based on Carnahan in view of Congleton should be withdrawn.

4. Carnahan in View of Congleton Does Not Render Obvious Claims 59 and 63 Having the Limitation of Holes for Receiving Protrusions from the Receiving Portion of the Base

Claim 59 recites a child seat with armrests, each with one connecting portion that slidably fits over a receiving portion of the base “*wherein each armrest includes holes for receiving protrusions from the receiving portion of the base.*” The reference combination does not teach or suggest at least this limitation of claim 59.

Carnahan fails to teach or suggest an armrest with one connecting portion slidably received over a receiving portion of the base, much less holes or protrusions as claimed. Congleton teaches a sleeve 62 slidably received over an arm 60 of the seat, making the arm the “receiving portion.” The arm 60 has notches, but no protrusions as claimed, and the armrest has no holes for receiving any such receiving portion protrusions as claimed. The combination of Carnahan and Congleton thus fails to teach or suggest at least this limitation of claim 59. Therefore, the rejection of claim 59 and corresponding claim 63 should be withdrawn for at least this additional reason.

B. The Combination of Carnahan and Congleton and Further in View of McAllister Does Not Render Obvious Claims 44 and 45

Though claim 45 was not identified in the body of the office action under any particular rejection, the appellant has confirmed by telephone with Examiner Garrett that the rejection of claim 45 is based on this reference combination. Claims 44 and 45 depend from independent claim 43. Claim 43 is believed to be patentable over the combination of

Carnahan in view of Congleton for the reasons stated above. Therefore, the rejection of claim 44 and 45 should be withdrawn as they depend from a base claim that is believed to be allowable.

Independent claim 43 recites a child seat with an armrest and a base “*wherein one of the receiving portion and the connecting portion includes a slot for receiving a tab located on the other of the receiving portion and the connecting portion.*” As stated above, the combination of Carnahan and Congleton fails to teach or disclose the limitation of a tab on one or the other of the connecting portion or receiving portion of claim 43. McAllister fails to cure the deficiencies of Carnahan and Congleton.

McAllister teaches an office chair armrest that attaches to the underside of the chair, similar to Congleton, and a height adjustment mechanism that adjusts the armrest along a vertical post. The adjustment mechanism includes a locking bar 44, a plurality of pins 48 in contact with the locking bar, and a spring housing attached to an open socket 108 and into which the biasing spring is mounted. McAllister does not disclose or suggest a tab, tongue, or flap of material as part of one of the posts 110 or open sockets 108. McAllister is only cited for its teachings of first and second holes for receiving the pins. McAllister fails to teach or suggest a tab as recited in claim 43 and, thus, fails to cure the deficiencies of Carnahan and Congleton. The reference combination fails to teach or suggest all the limitations of claim 43. Dependent claims 44 and 45 are not rendered obvious by Carnahan and Congleton in view of McAllister and the rejection should be withdrawn for at least this additional reason.

C. The Combination of Carnahan and McAllister Does Not Render Obvious Claims 62 and 64 Having the Limitation of an Integrally Formed Resilient Flexible Tab

Independent claim 62 recites that each receiving portion includes “*a resilient flexible tab integrally formed as part of the receiving portion and a protrusion on the flexible tab...*” As stated above in relation to claims 46 and 61, Carnahan fails to teach or suggest a resilient, flexible, integrally formed tab on the receiving portion of the armrest. McAllister fails to cure the deficiencies of Carnahan. The base 12 in McAllister would equate to the claimed receiving portion. The base 12 has no tab, much less one that is resilient, flexible, and integrally formed as part of the base 12. The movable portion 26 in McAllister is fitted over

the base 12 and also has no resilient, flexible, integrally formed tab as part of the movable portion.

The combination of Carnahan and McAllister does not render obvious this limitation. The rejection of claim 62 based on Carnahan and McAllister should be withdrawn.

The combination of Carnahan in view of McAllister fails to teach or suggest all of the limitations recited in claim 62. Claim 64 depends from claim 62. As claim 62 is believed to be allowable over Carnahan and McAllister, it follows that claim 64 is also allowable for the same reasons. The rejection of claim 64 should also be withdrawn.

In addition, and as stated previously, the rotational height adjustment scheme of the armrests is thoroughly claimed and described in Carnahan. McAllister, which is similar to Congleton, is not combinable with Carnahan in the manner suggested by the examiner for the same reasons set forth above with respect Carnahan and Congleton. Modifying Carnahan to alter the rotating armrests according to McAllister's vertical sliding armrest would require completely abandoning the Carnahan armrests' principal of operation. The combination of Carnahan and McAllister would destroy the express teachings of Carnahan, change the principal of operation of the Carnahan armrests, and render the Carnahan seat unsuitable for its intended purpose or a child's car seat. Combining the teachings of Carnahan and McAllister in the manner set forth in the office action is thus improper. The rejection of claims 62 and 64 should be withdrawn for at least this additional reason.

D. The Issuance of Ten (10) Office Actions Violates the PTO's Rules Requiring a Thorough and Thoughtful Examination

The PTO has to date issued ten (10) office actions in the instant application. Each new action has cited different references or reference combinations in rejecting the claims. However, each subsequent action has not cited art that is better or closer than the art cited in preceding actions. Including the previous appeal, the appellants' responses have overcome each and every rejection. Yet, the PTO continues to issue new actions. In at least four of the actions, the PTO rejects the claims based on earlier-cited references, despite further narrowing amendments and the appellants' prior successful traversal of the earlier rejections. The appellants struggle to understand how a resurrected reference becomes more pertinent in the face of narrower claims.

In the latest and tenth office action reopening prosecution from an appeal, the PTO cites the Carnahan reference *for a third time* as a primary §103 reference in rejecting the claims. The Carnahan reference has been previously cited as a primary §102 reference and as a secondary §103 reference. Each time the rejections were successfully traversed.

In another instance, the PTO first cited a Boyer reference (U.S. Patent No. 4,967,864) in the *eighth* Office action as a *secondary §103* reference. In the subsequent ninth office action, in the face of narrower claims, the Boyer reference was somehow transformed into a §102(b) reference, allegedly *anticipating* all of the pending claims. In each instance the rejection was again overcome.

The Office has failed to provide the appellants with an economical, efficient, and quality examination process in the instant application. The issuance of ten (10) office actions, citing a seemingly endless stream of sometimes previously-cited and sometimes newly-cited references, is not reflective of a thorough, thoughtful examination. Certainly such a scattershot approach to examination does not satisfy the dictates of 37 CFR. According to 37 CFR §1.104(a)(1), the PTO is required to thoroughly and thoughtfully examine the application. This section states:

[T]he examiner *shall* make a thorough study thereof and *shall* make a thorough investigation of the available prior art relating to the *subject matter* of the claimed invention. The examination *shall be complete* with respect ... to the patentability of the invention as claimed ... (emphasis added)."

Similarly, 37 CFR §1.104(c)(2) mandates reliance on the best-available prior art, stating "[i]n rejecting claims for want of novelty or for obviousness, the examiner *must* cite the best references at his or her command (emphasis added)."

The MPEP, at §707.05, also addresses the requirement for a thorough and thoughtful examination, stating:

During the examination of an application or reexamination of a patent, the examiner *should* cite appropriate prior art which is nearest to the subject matter defined in the claims. The examiner *must* consider all the prior art references (alone and in combination) cited in the application ... (emphasis added).

The MPEP at §707.07(g) expressly discourages a scattershot or "piecemeal" approach to examination, stating that:

Piecemeal examination should be avoided as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, avoiding, however, undue multiplication of references.”

Nevertheless, despite the fact that 37 CFR, as well as the MPEP, expressly fosters a thorough and efficient examination process, the examination of the present application has not lived up to the standards set forth above. Instead, the PTO has cited a multiplicity of references, often moving away from a reference, only to once again rely on that same reference in a later action as an obviating or an anticipatory reference in the face of now-narrowed claims. Such has been the tenor of the examination provided by the PTO in this application. The resultant examination has, without any justification, amounted to a classic piecemeal examination.

Perhaps MPEP §904.03 best articulates the standard to which the PTO should aspire, stating:

[It] is a prerequisite to a *speedy* and *just* determination of the issues involved in the examination of an application that a *careful* and *comprehensive* search ... be made in preparing the first action on the merits so that the second action on the merits can be made final or the application allowed *with no further searching other than to update the original search*. It is normally not enough that references be selected to meet only the terms of the claims alone, especially if only broad claims are presented ... (emphasis added).

Despite all of the foregoing, the search and examination of the present application amounts to a repetitive cycle of rejection, traversal, and re-rejection of narrowed claims. The same references somehow seem to be considered as getting better as the claims have become narrower.

It is abundantly clear to the appellants that the Examiner does not believe the pending claims and/or the invention to be patentable. Not all inventions are patentable. However, it is equally apparent that the Examiner can not find any reference or combination of references that anticipate or support a proper *prima facie* case of obviousness. For this reason alone, the claim rejections should be withdrawn and all pending claims should be allowed.

Dated: May 12, 2009

Respectfully submitted,

By: /Lynette K. Werner/

Lynette K. Werner

Registration No.: 60,316

LEMPIA BRAIDWOOD LLC

223 West Jackson Blvd., Suite 620

Chicago, Illinois 60606

(312) 291-0860

Attorney for Appellant

VII. CLAIMS APPENDIX

The following claims were last amended on November 14, 2007 by the appellants and before the final rejection from which this appeal is taken.

1-42. (Canceled)

43. A child seat for seating a child within a vehicle, the child seat comprising:
a base having a seating surface;
an armrest connected to the base on a side of the seating surface and positioned on the side of the seating surface;
wherein the armrest is adjustable along a straight line between a first height position relative to the seating surface and a second height position relative to the seating surface;
wherein the armrest includes only one connecting portion that slidably telescopes relative to a corresponding receiving portion of the base;
wherein the child seat is configured for placement on a seat of the vehicle;
wherein the child seat has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle; and
wherein one of the receiving portion and the connecting portion includes a slot for receiving a tab located on the other of the receiving portion and the connecting portion.

44. The child seat of claim 43, wherein the receiving portion includes a second slot and wherein the first and second slots correspond to the first and second positions of the armrest.

45. The child seat of claim 44, wherein the tab is attached to a flexible portion of the connecting portion of the armrest thereby allowing the tab to disengage with the slot when the tab is depressed.

46. A child seat for seating a child within a vehicle, the child seat comprising:
a base having a seating surface;
an armrest connected to the base on a side of the seating surface and positioned on the side of the seating surface;
wherein the armrest is adjustable along a straight line between a first height position relative to the seating surface and a second height position relative to the seating surface;
wherein the armrest includes a connecting portion that slidably fits into a corresponding receiving portion of the base;
wherein the child seat is configured for placement on a seat of the vehicle;
wherein the child seat has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle; and
wherein one of the receiving portion and the connecting portion includes a slot for receiving a protrusion on a resilient flexible tab integrally formed as part of the other of the receiving portion and the connecting portion.

47-58. (Canceled)

59. A child seat for seating a child within a vehicle, the child seat comprising:
a base having a seating surface defining a seat bottom;
a pair of armrests connected to the base and positioned on opposite sides of the seating surface;
wherein each armrest is adjustable along a straight line between first and second height positions and wherein a majority of movement of each armrest between the first and second height positions is vertically toward and away from the seat bottom;
wherein each armrest includes only one connecting portion that slidably fits over a corresponding single receiving portion of the base;
wherein each armrest includes holes for receiving protrusions from the receiving portion of the base; and
wherein the child seat is configured for placement on a seat of the vehicle.

60. A child seat for seating a child within a vehicle, the child seat comprising:
a base including a seating surface;
an armrest having only one connecting portion surrounded by, telescopically received in, and slidable relative to a receiving portion of the base on a side of the seating surface;
wherein the armrest is adjustable along a straight line in a vertical direction generally perpendicular to the seating surface;
wherein the armrest includes a tab that fits into a receiving slot of the base;
wherein the child seat is configured for placement on a seat of the vehicle; and
wherein the child seat has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle.

61. A child seat for seating a child within a vehicle, the child seat comprising:
a base having a seating surface;
a pair of armrests positioned and connected to the base on opposite sides of the seating surface;
wherein each armrest is adjustable in a vertical direction and wherein armrest movement is substantially upward and downward relative to the seating surface;
wherein each armrest has only one connecting portion telescopically movable over a receiving portion of the base received within the connecting portion;
wherein each receiving portion of the base includes a resilient flexible tab integrally formed as part of the receiving portion and protrusions on the flexible tab;
wherein the child seat is configured for placement on a seat of the vehicle; and
wherein the child seat has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle.

62. A child seat for seating a child within a vehicle, the child seat comprising:
a base having a seating surface;
a pair of armrests each positioned on and connected to the base on opposite sides of the seating surface;
wherein each armrest is adjustable between first and second positions substantially toward and away from the seating surface;
wherein each armrest includes a connecting portion that fits around a corresponding receiving portion of the base;
wherein each receiving portion includes a resilient flexible tab integrally formed as part of the receiving portion and a protrusion on the flexible tab;
wherein each connecting portion includes first and second slots to receive the protrusion, the first and second slots corresponding to the first and second positions, respectively; and
wherein the child seat is configured for placement on a seat of the vehicle.

63. The child seat of claim 59, wherein the child seat has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle.

64. The child seat of claim 62, wherein the child seat has a belt path configured to receive and locate relative to the child a lapbelt of a restraint system of the vehicle.

VIII. EVIDENCE APPENDIX

No additional evidence is submitted herewith in support of the Brief.

IX. RELATED PROCEEDINGS APPENDIX

No related proceedings are pending and no related decisions have been rendered.